

# **EXHIBIT 18**



1 U.S.\$5 million."

2 Do you know who it was that came up with the  
3 valuation for the inventory of \$5 million?

4 MR. HANEY: Objection, lacks foundation.

5 A. Shall I answer?

6 MR. HANEY: Yes.

7 BY MS. DURIE:

8 Q. You can still answer.

9 A. I don't know. I wasn't involved in that.

10 Q. Okay.

11 Can you turn to exhibit 17, please?

12 (Exhibit 17, previously marked)

13 Q. Do you recognize exhibit 17?

14 A. Yes, I do.

15 Q. What is it?

16 A. It is a termination notice.

17 Q. Is exhibit 17 a letter that you received from  
18 Mr. Larsen on or around June 26, 2005?

19 A. Yes.

20 Q. Can you please turn to exhibit 18.

21 (Exhibit 18, previously marked)

22 Q. Do you recognize what has been marked as  
23 exhibit 18?

24 MR. HANEY: Are you asking if he has seen it  
25 before?

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1 A. Yes, yes.

2 Q. It says:

3 "Sheikh Faisal will take suitable actions to  
4 dismiss Mr. Ashraf and Nabil Abou Essa from their actual  
5 position as manager of Roots."

6 Do you know whether that happened?

7 MR. HANEY: Objection as to form. It's compound.

8 A. I don't believe it happened.

9 BY MS. DURIE:

10 Q. And is it your testimony that from your  
11 perspective, Mr. Abu Issa's role in the company was  
12 unchanged throughout the time that you were General Manager?

13 A. I believe so, yes.

14 Q. Can you turn to exhibit 53.

15 (Exhibit 53, previously marked)

16 Q. Is exhibit 53 an e-mail exchange between  
17 yourself and Mr. Larsen from May of 2004?

18 A. Yes.

19 Q. Now, in your response to Mr. Larsen, you say:

20 "Our position stay the same, we in favour for 0  
21 downpayment and 125 percent stand by LC for one season for  
22 an average value of the last three orders. Kindly maintain  
23 this position with Gap."

24 Was Mr. Larsen negotiating with Gap on behalf of  
25 Gabana -- strike that.

1 surprised to hear that something has -- has changed, and  
2 this is what -- and what I am asking him is to maintain what  
3 we have agreed -- negotiated and agreed during our joint  
4 meeting with Gap in San Francisco.

5 Q. Why did you ask Mr. Larsen to maintain that  
6 position, rather than communicating directly with Gap  
7 yourself?

8 A. If I remember correctly, during our visits to  
9 San Francisco to place the orders and attend meetings with  
10 Gap, Francois sometimes used to stay a little bit longer.  
11 We just, you know, finished our meetings and leave. So  
12 I believe he might -- he was still there and was still  
13 negotiating or talking with them. Usually he stayed there  
14 a couple of days more and he would carry out any -- any  
15 issues with them.

16 Q. But why in this particular case, in May of  
17 2004, did you ask Mr. Larsen to maintain your position with  
18 Gap, rather than simply calling Gap directly yourself?

19 MR. HANEY: Objection, asked and answered.

20 A. I believe because he was the one that came up  
21 with the changes in the terms and the conditions that we  
22 agreed upon in San Francisco.

23 BY MS. DURIE:

24 Q. Okay.

25 Wasn't it the case that you understood that the

1 proper channel of communications was from Roots to Gabana,  
2 and then from Gabana to Gap?

3 MR. HANEY: Objection as to form.

4 A. In certain -- in certain items, yes. In  
5 certain issues, yes. On other issues, I used to speak  
6 directly to Gap. For example, retailer approval was always  
7 sent through Gabana.

8 BY MS. DURIE:

9 Q. And in this case, issues with respect to the  
10 terms of the letter of credit were also sent through Gabana;  
11 right?

12 MR. HANEY: Objection, lacks foundation.

13 A. No -- I do not agree on that, as I previously  
14 explained to you. We had an agreement with Gap and we went  
15 back home with an agreement, and then he changed it.

16 BY MS. DURIE:

17 Q. Why didn't you just pick up the phone and call  
18 whoever you spoke to at Gap and say, "Hey, this isn't what  
19 we agreed to"?

20 A. He made a mistake, he had to fix it. For us,  
21 we started working, based upon our agreement, and he came  
22 and he changed things and that wasn't acceptable to us. He  
23 is responsible to fix the situation.

24 MR. HANEY: Shall we take a --

25 MS. DURIE: If you turn to --

1 MR. HANEY: Can you read that back, please?

2 A. Yes, because it is not clear.

3 MR. HANEY: I think you may have made a mistake.

4 BY MS. DURIE:

5 Q. I will just ask it again.

6 Do you recognize what has been marked as  
7 exhibit 54 as an e-mail from Mr. Ehlen to yourself, dated  
8 April 6, 2004, below which is an e-mail from yourself to  
9 Mr. Ehlen, dated April 5th, 2004?

10 A. Yes.

11 Q. And you see at the end of the e-mail from  
12 Mr. Ehlen to you, he says:

13 "We remain dedicated to provide you support  
14 through our distributor, Gabana Ltd."

15 MR. HANEY: Sorry, which paragraph is that?

16 MS. DURIE: At the very end of Mr. Ehlen's e-mail.

17 A. Okay.

18 MR. HANEY: You -- what do you want? Is there  
19 a question?

20 BY MS. DURIE:

21 Q. The question was: do you see that?

22 MR. HANEY: Do you see it?

23 A. It's -- the question is not clear.

24 BY MS. DURIE:

25 Q. Do you see Mr. Ehlen's e-mail to you says at

1 the end:

2 "We remain dedicated to provide you support  
3 through our distributor, Gabana Ltd."

4 A. I see it, yes.

5 Q. Did you ever ask Mr. Ehlen why he told you  
6 that Gap was providing support to Roots through its  
7 distributor, Gabana Ltd?

8 A. No.

9 Q. Did you write back to him and tell him that  
10 was inconsistent with your understanding of the parties'  
11 agreement?

12 A. No.

13 Q. Did you understand Roots' relationship with  
14 Gap to be exclusive or non-exclusive?

15 MR. HANEY: Objection as to form.

16 A. Roots' relationship with?

17 BY MS. DURIE:

18 Q. Gap.

19 A. Gap. I don't understand the term "exclusive".  
20 What does "exclusive" mean?

21 Q. Have you ever heard of anyone referring to  
22 a Distribution Agreement as being "exclusive" or  
23 "non-exclusive"?

24 A. In general, yes.

25 Q. What do you understand "exclusive" to mean in



1 Do you know whether Solka, Roots and Gabana agreed  
2 that Gap would only provide compensation for issues having  
3 to do with the 1.7 million units of inventory if it received  
4 compensation from Solka?

5 A. I wasn't aware of that.

6 Q. You don't know?

7 A. No.

8 Q. Can you turn to exhibit 58?

9 (Exhibit 58, previously marked)

10 Q. Do you recognize exhibit 58 as an e-mail from  
11 yourself to Mr. Ehlen, dated August 9, 2004?

12 A. Yes.

13 Q. If you look at the fourth paragraph of your  
14 e-mail, you say:

15 "Now, the business plan is completed. I have  
16 already passed it to Gabana to seek Gap's approval,  
17 according to the proper procedure."

18 What was the proper procedure that you were  
19 referring to?

20 A. I am referring to the -- the retailer approval  
21 procedure only.

22 Q. And you understood that requests to approve  
23 retailers to sell Gap clothing had to go through Gabana;  
24 right?

25 A. Yes.

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1 Q. Did you have an understanding as to why those  
2 requests had to go through Gabana?

3 A. That was the proper channel.

4 Q. Why was it the proper channel?

5 A. I never asked myself that question.

6 Q. Below that, there are some numbered points.

7 The second one says:

8 "GS reservations have been virtually eliminated,  
9 as a result of viewing the Spring collection in San  
10 Francisco."

11 GS was a potential retailer in Lebanon; correct?

12 A. Correct.

13 Q. What were GS's reservations?

14 A. GS raised issues about the ISP collection, if  
15 it is -- if it is limited or it's complete, in terms of  
16 models, stuff like that.

17 Q. When GS was initially approached about serving  
18 as a retailer for Gap merchandise, did GS express concerns  
19 about the ISP collection?

20 A. I believe it wasn't immediately, but when the  
21 ISP program was explained to them, then they started having  
22 the concerns.

23 Q. And those concerns were expressed to Gap;  
24 correct?

25 MR. HANEY: Objection as to form.

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1 A. They were expressed to Roots first, then they  
2 were conveyed to Gap.

3 BY MS. DURIE:

4 Q. Please turn to exhibit 59.

5 (Exhibit 59, previously marked)

6 Q. Do you recognize exhibit 59 as an e-mail from  
7 Mr. Larsen to yourself, dated May 25th, 2004; below  
8 which is an e-mail from Isabelle Richard to yourself,  
9 dated May 25th, 2004?

10 A. Yes.

11 Q. In May of 2004, was there an issue with RSH  
12 advertising in newspapers?

13 A. I believe we -- the approval for the ads was  
14 pending.

15 Q. What were the Dubai ads that are referenced in  
16 Mr. Larsen's e-mail to you?

17 A. The Dubai ads are -- to the best of my  
18 recollection, are sales ads.

19 Q. The Dubai ads were ads that had been placed by  
20 RSH, advertising the sale of Gap product; correct?

21 A. I believe so, yes.

22 Q. And those ads had not been approved by Gap;  
23 correct?

24 A. Eventually they were.

25 Q. At the time that Mr. Larsen sent you this

1 BY MS. DURIE:

2 Q. So is it your testimony that you copied the  
3 language, but didn't think about what it meant?

4 A. Yes.

5 Q. Let me have marked as the next exhibit  
6 RRMG00051329 through 338.

7 (Exhibit 94 marked for identification)

8 Q. Do you recognize what has been marked as  
9 exhibit 94?

10 A. Yes.

11 Q. Do you recognize the first page as an e-mail  
12 from Mr. Larsen to yourself --

13 A. Yes.

14 Q. -- dated November 28, 2004?

15 A. Yes.

16 Q. And the handwriting at the top of the page is  
17 your handwriting; right?

18 A. Yes.

19 Q. And it says:

20 "Mr. Ashraf, my comments are indicated for your  
21 review and instructions. Naser."

22 A. Yes.

23 Q. If you turn to the next page, the attachment  
24 is a Sub-Distribution Agreement between Gabana and Roots;  
25 right?

1 A. Yes.

2 Q. This was a document that Mr. Larsen had  
3 forwarded to you?

4 A. Yes.

5 Q. And you made handwritten comments on that  
6 document; right?

7 A. Yes.

8 Q. Okay.

9 Now, if we turn to the third page of the exhibit  
10 ending in Bates stamp number 331. Do you see where I am?  
11 It says at the top "Whereas".

12 A. Yes.

13 Q. And it says:

14 "Whereas Gabana is an authorized ISP distributor  
15 of goods produced by Gap International B.V. in the countries  
16 mentioned in Exhibit A of the Distributor License Agreement  
17 signed on September 1st, 2004 between Gabana and Gap  
18 B.V."

19 You didn't make any comments on that paragraph,  
20 did you?

21 A. No.

22 Q. And that's because, to the best of your  
23 knowledge, that was accurate; right?

24 A. My main comments were revolving on trying as  
25 much as possible, without being a lawyer, to preserve the

1 rights of Roots, and that was what was my main concern.  
2 I didn't look at, you know, the contractual statements here  
3 because I was sure that Ashraf will take care of that.

4 Q. Well, you did make a number of comments on  
5 this document, didn't you?

6 A. Yes, I did.

7 Q. In fact, you made comments at the end of the  
8 section of the "Whereas" clauses on the first page; right?  
9 On the first page of the contract?

10 A. Yes.

11 Q. Did you think that the statement that "Gabana  
12 was an authorized ISP distributor of goods produced by Gap"  
13 was wrong?

14 A. I didn't comment on that.

15 Q. I understand. Did you think it was wrong?

16 A. I don't know.

17 Q. The second recital says:

18 "Gabana wishes that Roots acts as its ISP  
19 sub-distributor for all Countries mentioned in Exhibit A."

20 You didn't comment on that paragraph either, did  
21 you?

22 A. "Gabana wishes ..." No, I didn't.

23 Q. Did you think that was wrong?

24 A. As I told you, I left all these issues to  
25 Ashraf because he is the right person to negotiate on these

1 things. I was just focussing on the particulars of  
2 defending the interests of Roots in day-to-day.  
3 Strategically what they are agreeing on, it's above my head.

4 Q. Okay.

5 Well, you didn't comment on paragraph 3 under the  
6 "Whereas" clauses either, did you?

7 A. No.

8 Q. But you did comment on the fourth "Whereas"  
9 clause?

10 A. Yes.

11 Q. You added a comment that:

12 "Roots and Gabana wishes that the management of  
13 all the administrative activities related to the  
14 distribution of goods is performed by Gabana."

15 And you added "Dubai branch"?

16 A. Yes, I did.

17 Q. And then you added a whole new "Whereas"  
18 clause underneath that; right?

19 A. Yes.

20 Q. Can you read it, please?

21 A. It's not very clear.

22 "Roots purchased a big stock of overproduction  
23 from Gap Inc. to have the ISP ..."

24 Q. Let me stop you there.

25 MR. HANEY: He didn't finish.

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1 MR. HANEY: This set of comments or --

2 MS. DURIE: A set of comments.

3 MR. HANEY: -- any set of comments?

4 Before he answers that, do you want him to read 68  
5 or --

6 BY MS. DURIE:

7 Q. No. So before -- this question doesn't relate  
8 specifically to exhibit 68.

9 Did you send Mr. Larsen a set of comments on his  
10 draft Sub-Distribution Agreement?

11 A. I believe so, yes.

12 Q. And did Mr. Larsen then send a set of comments  
13 back to you?

14 A. I believe so, yes.

15 Q. And if you turn to exhibit 68, do you  
16 recognize exhibit 68 as an e-mail exchange between yourself  
17 and Mr. Larsen on December 7th, 2004 that you then  
18 forwarded to -- can you pronounce that name for me?

19 A. Sanaa.

20 Q. Sanaa Sobh?

21 A. Sanaa Sobh.

22 Q. Do you recognize that?

23 A. Yes.

24 Q. So you -- Mr. Larsen says:

25 "Thanks for your comments on the sub-distribution



1 something.

2 MS. DURIE: 8362.

3 MR. HANEY: Thanks, got it.

4 BY MS. DURIE:

5 Q. You were the one who prepared the ISP  
6 Distributor License Agreement that's part of exhibit 95,  
7 working from the draft Gabana-Roots Distributor License  
8 Agreement as a template; right?

9 A. Right, correct.

10 Q. Now, if you turn to the first page of that ISP  
11 Distributor License Agreement, Bates number 8362. Do you  
12 see under the recitals, it says --

13 A. What is ...

14 Q. Under the recitals, it says:

15 "Roots manages the right on behalf of Gabana Gulf  
16 Distribution Ltd, granted by Gap (hereinafter referred to as  
17 'the manufacturer') to sell and/or distribute ISP  
18 merchandise."

19 Who wrote that language?

20 A. I believe I replaced the word that was after  
21 point A, which was most probably "Gabana-Roots", and I put  
22 "Roots" on the -- yes, sorry. I misunderstood. Most  
23 probably I did that, yes.

24 Q. You wrote that paragraph?

25 A. Yes.

1 Q. Why did you say that "Roots manages the right  
2 on behalf of Gabana Gulf Distribution Ltd"?

3 A. Because Roots does that.

4 Q. What does it mean "to manage the right on  
5 behalf of Gabana"?

6 A. That means that Gabana gives Roots the right  
7 to manage the ISP program that has been granted by Gap.

8 Q. And that's because Gap had granted the ISP  
9 rights to Gabana; right?

10 MR. HANEY: Objection as to form. It calls for  
11 a legal conclusion.

12 A. It could be interpreted in this way.

13 BY MS. DURIE:

14 Q. If you can turn to the page numbered 5. The  
15 ending Bates number is 8366. Article 10, "Authorized  
16 Retailer Approval".

17 A. Okay.

18 Q. You see that it says:

19 "Roots shall have the right, in its sole  
20 discretion, disapprove or cancel at any time any HSTCO (GS)  
21 retail store where HSTCO (GS)'s propose to sell or have sold  
22 Authorized Goods."

23 Why was that provision included?

24 A. Because it is part of the template that has  
25 been used and the names just have been plugged in.

1 Q. The way the ISP deal worked, Gap would sell  
2 product to Gabana; right?

3 MR. HANEY: Objection as to form.

4 A. How I see it, it's -- Roots place their orders  
5 at Gap Inc. in San Francisco. The orders get consolidated  
6 and shipped to Gabana.

7 BY MS. DURIE:

8 Q. Well, the purchase order would come from  
9 Gabana; right?

10 A. I believe so, yes.

11 Q. And Gap would send the product to Gabana;  
12 right?

13 A. Gap sends the product to Dubai, Jebel Ali. We  
14 receive it.

15 Q. Okay.

16 But the name of the entity that's listed as  
17 receiving that product in the first instance is Gabana;  
18 right?

19 MR. HANEY: Objection as to form.

20 A. I have no access to such documents.

21 BY MS. DURIE:

22 Q. Well, isn't it the case that Gabana was  
23 charging a mark-up on product that Roots was receiving?

24 A. Yes.

25 Q. Why was Roots -- why was Gabana charging

1 a mark-up?

2 A. I believe because that was the agreement with  
3 Gabana.

4 Q. The agreement was that the deal went from Gap  
5 to Gabana. Gabana would then add on its margin and turn  
6 around and resell the product to Roots; right?

7 MR. HANEY: Objection as to form.

8 A. I didn't witness such agreement and I have no  
9 document to that effect.

10 BY MS. DURIE:

11 Q. Well, you do know that Gabana was charging  
12 a margin --

13 A. Yes.

14 Q. -- on sales?

15 A. Yes.

16 Q. Did Gabana fail to live up to its commitment  
17 to help Roots sell the excess inventory?

18 A. Yes.

19 Q. Let me have marked as the next exhibit  
20 RRMG00009348 through 53.

21 (Exhibit 98 marked for identification)

22 Q. Do you recognize what has been marked as  
23 exhibit 98 as an e-mail exchange among yourself and  
24 Mr. Larsen in May of 2004?

25 A. Correct.

1 an offer to purchase some portion of the excess inventory  
2 was made and rejected?

3 A. Yes.

4 Q. Were you ever present for any discussions  
5 about the possibility of Roots obtaining any franchise  
6 rights?

7 A. No.

8 Q. Did anyone from Roots ever tell you that Roots  
9 had been promised any franchise rights?

10 A. Once I recall that we were in San Francisco.  
11 Mr. Ashraf, Ellen Monroe and myself during one of the buying  
12 sessions. And we were having lunch and they were talking  
13 about that possibility, and they were just, you know,  
14 discussing it.

15 Q. Other than that one discussion over lunch  
16 about the possibility, did anyone from Roots tell you about  
17 any conversations or representations that had been made  
18 about the franchise rights?

19 A. No, not to my knowledge.

20 Q. Was part of your job responsibilities as  
21 General Manager of Roots to go on trips to meet with  
22 potential retailers?

23 A. Yes.

24 Q. How many such trips did you go on?

25 A. Quite a few. I went twice to Panama. I went

CERTIFICATE OF COURT REPORTER

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I, ROSE HELEN CLAIRE KAY, an Accredited LiveNote Reporter, hereby certify that the testimony of the witness NASER BEHEIRY in the foregoing transcript, numbered pages 1 through 123, taken on Tuesday, June 24, 2008 was recorded by me in machine shorthand and was thereafter transcribed by me; and that the foregoing transcript is a true and accurate verbatim record of the said testimony.

I further certify that I am not a relative, employee, counsel or financially involved with any of the parties to the within cause, nor am I an employee or relative of any counsel for the parties, nor am I in any way interested in the outcome of the within cause.

Signed: ..... 

ROSE HELEN CLAIRE KAY

Dated: Tuesday, June 24, 2008